

AMENDED IN SENATE AUGUST 18, 2016

AMENDED IN SENATE AUGUST 2, 2016

AMENDED IN ASSEMBLY APRIL 28, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

## ASSEMBLY BILL

**No. 634**

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**Introduced by Assembly Member Calderon**

February 24, 2015

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An act to amend ~~Section 11273 of the Business and Professions Code, relating to time-shares~~; *Section 881 of the Probate Code, as added by Assembly Bill 691 of the 2015–16 Regular Session, relating to estates.*

### LEGISLATIVE COUNSEL’S DIGEST

AB 634, as amended, Calderon. ~~Vacation ownership and time-shares: owners list.~~ *Revised Uniform Fiduciary Access to Digital Assets Act.*

*Existing law provides for the disposition of a testator’s property by will. Existing law also provides for the disposition of that portion of a decedent’s estate not disposed of by will. Existing law provides that the decedent’s property, including property devised by a will, is generally subject to probate administration, except as specified.*

*AB 691 of the 2015–16 Regular Session would enact the Revised Uniform Fiduciary Access to Digital Assets Act, which would authorize a decedent’s personal representative or trustee to access and manage digital assets and electronic communications, as specified. Among other provisions, AB 691 would provide that a custodian of digital assets, and its officers, employees, and agents, are immune from liability for an act or omission done in good faith and in compliance with the act.*

*This bill would specify that this immunity does not apply in a case of gross negligence or willful or wanton misconduct. The bill would become operative only if AB 691 is enacted prior to the enactment of this bill.*

~~The Vacation Ownership and Time-share Act of 2004 requires all records of a time-share plan maintained by a time-share association to be made available for inspection and copying by any member for a purpose reasonably related to membership in the association. Existing law requires the time-share association to maintain among its records a complete list of the names and addresses of all owners of time-share interests in the time-share plan, as specified. Existing law prohibits an association from publishing the owners list or providing a copy of it to any time-share interest owner or to any 3rd party or using or selling the list for commercial purposes, except as provided in the time-share instruments.~~

~~This bill would require the owner addresses in the list to be mailing addresses, and would prohibit the association from publishing the list or providing a copy of it to any 3rd party or using or selling the list for commercial purposes. The bill would require the association to provide a copy of the list to an owner for a purpose reasonably related to membership in the association, except as specified. The bill would require, if a time-share interest owner makes a request to communicate by mail with the membership of the association for a purpose reasonably related to membership in the association, the communication to be made within 30 days of receipt of the request and payment of actual costs in performing the mailing. The bill would require, if the purpose is not reasonably related, the board of administration of the association or the managing entity to notify the requesting owner of the rejection. The bill would authorize a court to summarily order the distribution of the requested communication if it is not distributed within 30 days after receipt of a request from an owner and payment of actual costs. The bill would also specify that certain provisions of the Nonprofit Mutual Benefit Corporation Law pertaining to the list of names, addresses, and voting rights of members of a nonprofit mutual benefit corporation do not apply to time-share associations under the Vacation Ownership and Time-share Act of 2004.~~

~~Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.~~

*The people of the State of California do enact as follows:*

1     **SECTION 1.** *Section 881 of the Probate Code, as added by*  
2 *Assembly Bill 691 of the 2015–16 Regular Session, is amended to*  
3 *read:*

4     881. (a) Not later than 60 days after receipt of the information  
5 required under Section Sections 876 to Section 879, inclusive, a  
6 custodian shall comply with a request under this part from a  
7 fiduciary or designated recipient to disclose digital assets or  
8 terminate an account. If the custodian fails to comply with a  
9 request, the fiduciary or designated recipient may apply to the  
10 court for an order directing compliance.

11     (b) An order under subdivision (a) directing compliance shall  
12 contain a finding that compliance is not in violation of Section  
13 2702 of Title 18 of the United States Code.

14     (c) A custodian may notify a user that a request for disclosure  
15 of digital assets or to terminate an account was made pursuant to  
16 this part.

17     (d) A custodian may deny a request under this part from a  
18 fiduciary or designated recipient for disclosure of digital assets or  
19 to terminate an account if the custodian is aware of any lawful  
20 access to the account following the date of death of the user.

21     (e) This part does not limit a custodian's ability to obtain or to  
22 require a fiduciary or designated recipient requesting disclosure  
23 or account termination under this part to obtain a court order that  
24 makes all of the following findings:

25     (1) The account belongs to the decedent, principal, or trustee.

26     (2) There is sufficient consent from the decedent, principal, or  
27 settlor to support the requested disclosure.

28     (3) Any specific factual finding required by any other applicable  
29 law in effect at that time, including, but not limited to, a finding  
30 that disclosure is not in violation of Section 2702 of Title 18 of  
31 the United States Code.

32     (f) (1) A custodian and its officers, employees, and agents are  
33 immune from liability for an act or omission done in good faith in  
34 compliance with this part.

35     (2) *The protections specified in paragraph (1) shall not apply*  
36 *in a case of gross negligence or willful or wanton misconduct of*  
37 *the custodian or its officers, employees, or agents under this part.*

1     ~~SEC. 2. This act shall become operative only if Assembly Bill~~  
2     ~~691 is also enacted and this act is enacted after Assembly Bill 691.~~

3     ~~SECTION 1. The Legislature hereby finds and declares all of~~  
4     ~~the following:~~

5     ~~(a) In 2010, the court of appeal held that time-share association~~  
6     ~~membership lists containing personal information may be~~  
7     ~~distributed over the objection of many time-share owners.~~

8     ~~(b) Time-share associations frequently have membership lists~~  
9     ~~in excess of 10,000 members.~~

10    ~~(c) Membership lists on the open market are of substantial value,~~  
11    ~~particularly to unscrupulous parties that prey upon time-share~~  
12    ~~owners.~~

13    ~~(d) Legislation is needed to protect the privacy of time-share~~  
14    ~~owners.~~

15    ~~SEC. 2. Section 11273 of the Business and Professions Code~~  
16    ~~is amended to read:~~

17    ~~11273. (a) Except as provided in subdivision (e), the books~~  
18    ~~of account, minutes of members and governing body meetings,~~  
19    ~~and all other records of the time-share plan maintained by the~~  
20    ~~association or the managing entity shall be made available for~~  
21    ~~inspection and copying by any member, or by his or her duly~~  
22    ~~appointed representative, at any reasonable time for a purpose~~  
23    ~~reasonably related to membership in the association.~~

24    ~~(b) The records shall be made available for inspection at the~~  
25    ~~office where the records are maintained. Upon receipt of an~~  
26    ~~authenticated written request from a member along with the fee~~  
27    ~~prescribed by the governing body to defray the costs of~~  
28    ~~reproduction, the managing entity or other custodian of records of~~  
29    ~~the association or the time-share plan shall prepare and transmit~~  
30    ~~to the member a copy of any and all records requested.~~

31    ~~(c) The governing body shall establish reasonable rules with~~  
32    ~~respect to all of the following:~~

33    ~~(1) Notice to be given to the managing entity or other custodian~~  
34    ~~of the records by the member desiring to make the inspection or~~  
35    ~~to obtain copies.~~

36    ~~(2) Hours and days of the week when a personal inspection of~~  
37    ~~the records may be made.~~

38    ~~(3) Payment of the cost of reproducing copies of records~~  
39    ~~requested by a member.~~

1     ~~(d) Every governing body member shall have the absolute right~~  
2 ~~at any time to inspect all books, records, and documents of the~~  
3 ~~association and all real and personal properties owned and~~  
4 ~~controlled by the association.~~

5     ~~(e) (1) The association shall maintain among its records a~~  
6 ~~complete list of the names and mailing addresses of all owners of~~  
7 ~~time-share interests in the time-share plan. The association shall~~  
8 ~~update this list no less frequently than every six months. The~~  
9 ~~association shall not publish this list or provide a copy of it to any~~  
10 ~~third party, or use or sell the list for commercial purposes. The~~  
11 ~~association shall provide a copy of the list to a member for a~~  
12 ~~purpose reasonably related to membership in the association.~~  
13 ~~However, notwithstanding this requirement, if the association~~  
14 ~~reasonably believes that the recipient of the list will use the list~~  
15 ~~for another purpose or provide a copy or disclose the contents to~~  
16 ~~another party, the association shall refuse to provide the member~~  
17 ~~a copy of the list.~~

18     ~~(2) (A) If an owner of a time-share interest in the time-share~~  
19 ~~plan makes a request to the association to communicate by mail~~  
20 ~~with the membership of the association for a purpose reasonably~~  
21 ~~related to membership in the association, and the board of~~  
22 ~~administration of the association or the managing entity determines~~  
23 ~~that the mailing pertains to a purpose reasonably related to~~  
24 ~~membership in the association, the requested mailing shall be made~~  
25 ~~within 30 days after receipt of a request and payment by the owner~~  
26 ~~of actual costs in accordance with subparagraph (B). If the board~~  
27 ~~or managing entity determines that the requested mailing does not~~  
28 ~~pertain to a purpose reasonably related to membership in the~~  
29 ~~association, the board or the managing entity shall, within 30 days~~  
30 ~~after receipt of the request, notify the requesting owner in writing~~  
31 ~~and shall indicate the reasons for the rejection.~~

32     ~~(B) The owner who requests the mailing shall pay the association~~  
33 ~~in advance for the association's actual costs in performing the~~  
34 ~~mailing. The association shall make a good faith effort to minimize~~  
35 ~~the costs of the mailing, including the use of a less expensive~~  
36 ~~delivery method, including electronic delivery.~~

37     ~~(C) If the board of administration or managing entity does not~~  
38 ~~distribute the requested communication within 30 days after receipt~~  
39 ~~of a request from an owner and payment of actual costs, the~~  
40 ~~superior court in the county where the time-share plan is located~~

1 may, upon application from the requesting owner, summarily order  
2 the distribution of the requested communication. To the extent  
3 possible, the superior court shall dispose of an application on an  
4 expedited basis. In the event the court orders the distribution of  
5 the requested communication, it may order the board or managing  
6 entity to pay the owner's costs, including attorney's fees reasonably  
7 incurred to enforce the owner's rights, unless the board or the  
8 managing entity can prove it refused to distribute the  
9 communication in good faith because of a reasonable belief that  
10 the requested communication did not pertain to a purpose  
11 reasonably related to membership in the association.

12 (D) It is unlawful for the board of administration of the  
13 association or managing entity to refuse to distribute a  
14 communication requested by an owner if the requested  
15 communication would address a purpose reasonably related to  
16 membership in the association.

17 (3) Section 8330 of the Corporations Code shall not apply to  
18 time-share associations under this chapter.

19 (f) For single site time-share plans and component sites of a  
20 multisite time-share plan located outside of the state, the association  
21 shall be subject to the provisions set forth in this section. The  
22 association must be in compliance with the applicable laws of the  
23 state or jurisdiction in which the time-share property or component  
24 site is located, and if a conflict exists between laws of the situs  
25 state and the requirements set forth in this section, the law of the  
26 situs state shall control. If the association and the time-share  
27 instruments provide for the matters contained in this section, the  
28 association shall be deemed to be in compliance with the  
29 requirements of this section and neither the developer nor the  
30 association shall be required to make revisions to the time-share  
31 instruments in order to comply with the section.